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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

NO. 71-1342

FREDERICK P. ADAMS, *Petitioner*

versus

HARRIS COUNTY, TEXAS, *Respondent*

PETITIONER'S REPLY TO RESPONDENT'S REPLY BRIEF

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To The Honorable Supreme Court Of The United States:

Under what Respondent terms a "Statement of Policy," appearing on page 3, counsel intones that the County "will continue to abide" the observations of the intermediate court that "There is no place in this appeal for acrimony, or its bearing on personalities."

It would appear that it is impossible for Respondent's counsel to comply with that suggestion, or they are simply incapable of understanding the meaning of those words.

For example, on page 18 of the "Response," the following statement appears:

> "The Honorable Trial Judge chose to *align himself* completely with the Claimant's cause, almost to the point of *becoming an advocate of Claimant.*"

This unbridled attack upon the integrity of the District Court is not only acrimonious by definition, but it fairly approximates the equally blatant Motion for Leave to File a Petition for Writ of Mandamus, to which reference was made in Footnotes 1 on pages 2 and 3 of the Petition for Writ of Certiorari. We pray the Court to examine that document.

Another illustration of the inability of counsel to adhere to the County's "Statement of Policy" appears on pages 22 and 23 of the "Response," wherein it is stated:

> "Equity is not evoked merely because a Claimant has been wrongfully advised that there is a remedy for his problem. If there be cruelty in this case beyond that which life holds for us all, it is not in the law which must inexorably apply to the allegations, but it is in *ill counsel which has begotten hope where there is none,* and has promised a right where one has never existed."

These charitable insults are anent to a misrepresentation of counsel implicit in this Response.

Totally *dehors* the record the County emphasized on page 2 that:

> "Mr. Adams has also filed a suit in the District Court of Harris County, Texas which is pending."

Then, again outside the record, counsel inaccurately states on page 22:

> "* * * there is not, and there never has been, a remedy in the Maritime Courts for his claim. Plaintiff's remedy, *if he has one,* and he now admits for his own purposes that he does not have one, is in the District Court of Harris County, Texas, where his *pending lawsuit* lies dormant. * * *" (Emphasis by Respondent)

This excerpt patently suggests that Adams has a viable remedy extant, and that his counsel has merely admitted "for his own purposes" at this stage that Adams "does not have one." It would serve no useful purpose to belabor this matter. The County has a Motion to Dismiss in the state court action based upon the doctrine of sovereign immunity, and on behalf of Mr. Adams we tender that arm of government the opportunity to withdraw that Motion and proceed to trial on the merits. Obviously it will not do so, and these inappropriate observations outside the record are but further evidences of what this grievously injured young man has had to put up with.

Other than to note that the *Troy* and *Cleveland* cases do not touch, top, side or bottom, the question here before the Court, only one other matter in the "Response" merits attention. In undertaking to explain the addication of responsibility by the Court of Appeals to consider only those allegations and matters of evidence favorable to Adams in this interlocutory appeal, Respondent has the following to say:

> "* * * Furthermore, please remember that the *Trial Court is the trier of facts in maritime cases,* and his conclusions would bear far more weight

under these circumstances than a case that would eventually be tried before a jury. For these reasons, no procedural error was committed by the Honorable Fifth Circuit Court of Appeals." (See page 19 of the Response.)

This is a legal misrepresentation of the situation. In an interlocutory appeal under 28 USCA, Section 1292(b), neither the District Courts nor the Courts of Appeals become triers of fact in the ordinary sense, but it is this very fact-finding process that was indulged by the Court of Appeals that we attack. It occurs to us that had the Court of Appeals adopted the correct rule, it would never have made the factual conclusions leading to its ultimate Judgment. In any event, the Court of Appeals and counsel for Respondent are in gross error in resolving factual differences. The trial Court was not a trier of fact in the context of a matter of maritime jurisdiction. Moreover, as we have previously noted, the opinion of the District Court was rendered prior to the time the depositions establishing the true facts were taken.

In sum, counsel for Respondent sanctimoniously claims it has taken the "high road." If so, we would muchly dislike to examine the "low road."

WHEREFORE, Frederick P. Adams once again prays this Honorable Court to grant Writ of Certiorari to review the Opinion and Judgment of the United States Court of Appeals for the Fifth Circuit, and to thereafter reverse

and remand that decision for trial on the merits, and for such other orders as appear proper in the premises.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the above and foregoing Reply have been mailed to Joe Resweber, Esq., Counsel for Harris County, Texas.

_____
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